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FEB 18 2004

Docket No: ACY-33377  
Patent# DAC  
# 11OFFICE OF EDITIONS  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of: Thomas N. METCALF, III, et al.  
Application No.: 09/674,368 Group Art No.: Not Yet Assigned  
Filed: April 12, 1999 Examiner: Not Yet Assigned  
For: VACCINES CONTAINING RECOMBINANT PILAN AGAINST  
NEISSERIA GONORRHOEAE OR NEISSERIA MENINGITIDIS  
Confirmation No.: 6981  
Customer Number: 25291

2-13-04

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

February 13, 2004

Sir:

TRANSMITTAL LETTER

1. Enclosed please find the following documents for the above-identified application:

Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b);

Details Regarding Unintentional Delay: Attachment to Form PTO/SB/64 – Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b).

The Commissioner is hereby authorized to charge any additional fees required by this paper, including the enclosed documents, and during the entire pendency of this application and to credit any excess amounts paid to Deposit Account No. 01-1300. A copy of this letter is enclosed for use by the Deposit Account Branch.

Respectfully submitted,

J. Darrell Fontenot  
Attorney for Applicants  
Reg. No. 46,705

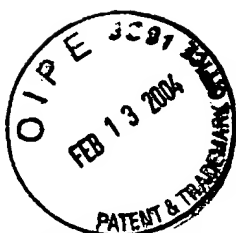
Wyeth  
Patent Law Department  
Five Giralda Farms  
Madison, NJ 07940  
Tel. No. (845) 602-3144

**CERTIFICATE OF MAILING 37 CFR §1.10**

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EU673381261US addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Feb. 13, 2004  
Date

  
J. Darrell Fontenot



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#11

PTO/SB/64 (11-03)

OFFICE OF PETITIONS

Approved for use through 07/31/2006. OMB 0651-0031

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

ACY33377-00

First named inventor: Thomas N. Metcalf, III

Application No.: 09/674,368

Art Unit: Not Yet Assigned

Filed: April 12, 1999

Examiner: Not Yet Assigned

Title: VACCINES CONTAINING RECOMBINANT PILAN AGAINST NEISSERIA GONORRHOEAE  
OR NEISSERIA MENINGITIDIS

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☒ Other than small entity - fee \$1330.00 (37 CFR 1.17(m)) Please charge this amount and

any other fees to Deposit Account No. 01-1300. A duplicate of this Petition is enclosed.

## 2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of Sequence Listing in Computer Readable Form (Identify type of reply):☒ has been filed previously on August 23, 2002☐ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_☐ is enclosed herewith.

02/18/04 RWDNDAF1 00000046 011300 09674368

01 FEB 1453 1330.00 DA

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

### 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

Feb. 13, 2004  
Date

J. Darrell Fontenot  
Signature

Telephone  
Number: 845-602-3144

J. Darrell Fontenot

Typed or printed name

Wyeth

Address

Enclosures: ☒ Fee Payment

401 N. Middletown Road, Pearl River, NY  
Address 10965

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

### CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

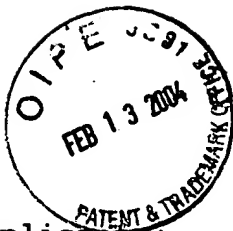
☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

Feb. 13, 2004  
Date

J. Darrell Fontenot  
Signature

J. Darrell Fontenot

Type or printed name of person signing certificate



Docket Number ACY33377-00

Applicants:

Thomas N. Metcalf, III, et al.

U.S. Application No.: 09/674,368

International (PCT)

Application No.: PCT/US99/09486

Filed: April 29, 1999 (PCT Filing Date)

Title: Vaccines Containing Recombinant Pilin  
Against *Neisseria Gonorrhoeae* or  
*Neisseria Meningitidis*

Customer No.: 25291

Confirmation No.: 6981

Attention: Office of Petitions  
Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DETAILS REGARDING UNINTENTIONAL DELAY:  
ATTACHMENT TO FORM PTO/SB/64 -  
PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNINTENTIONALLY UNDER  
37 C.F.R. 1.137(b)

The following details are presented to demonstrate that the entire delay in filing the Petition for Revival from the due date for entry into the U.S. national stage until the filing of a grantable petition was unintentional.

On April 29, 1998, Applicants filed United States provisional patent application serial number 60/083,405 bearing the above-referenced title. On April 29, 1999, Applicants filed international patent application serial number PCT/US99/09486, designating all countries including the United States, and claimed priority from provisional application 60/083,405. On November 25, 1999, Applicants filed a Demand to have the international application proceed via Chapter II of the PCT. Therefore, the deadline for entering the national phase in the United States was set at 30 months from the U.S. priority filing, or October 29, 2000.

On October 27, 2000 Applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by the basic national fee required under 35 U.S.C. § 71 (c) (1) and a sequence listing in computer readable form (CRF).

On June 11, 2001, the Office mailed a "Notification to Comply with Requirements for Patent Application Containing Nucleotide Sequences and/or Amino Acid Disclosures" (the "Notification to Comply"), wherein the Office stated that the "computer readable form that had been filed with this application has been found to be damaged and/or unreadable" and requested the Applicants to submit a substitute computer readable sequence listing as required under 37 C.F.R. §§ 1.821 - 1.825.

On December 11, 2001 Applicants filed a response to the *Notification to Comply* including a substitute CRF.

On March 18, 2002, the Office mailed a "Notification of Defective Response" and a Raw Sequence Listing Error Report indicating that the substitute CRF was defective. The Office also set a time limit of one month from the date of this Notification or the *Notification to Comply*, whichever was longer.

On April 18, 2002 the national stage application became abandoned for failure to timely respond to the *Notification of Defective Response*.

On May 13, 2002, Dr. Anand Iyer, the attorney in charge of this case filed a petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment and explaining that the problems with the sequence listing had arisen from an incompatibility between Patentin 2.0 and Patentin 3.0.

On August 23, 2002, in response to a suggestion in a telephone conference with Examiner Christopher Low, Dr. Iyer filed a second Response to the *Notification to Comply*. At that time, Dr. Iyer also submitted an additional corrected Sequence Listing with CRF. This sequence listing or CRF is in the possession of the Patent Office and is believed to satisfy 37 C.F.R. §§ 1.821 - 1.825.

On April 21, 2003 responsibility for this application was transferred to the undersigned, Darrell Fontenot (Reg. No. 46,705) a new attorney at Wyeth. I was not aware of the abandoned status of the application because no notice of abandonment was ever received.

On or about January 19, 2004, I first became aware of a potential problem regarding this application when preparing a response to a foreign office action in a corresponding foreign application. I consulted the U.S. file wrapper and realized that there was an outstanding petition to withdraw a holding of abandonment and that no response had been received by our office location (Wyeth-Pearl River, New York) for either the May 13, 2002 petition or the August 23, 2002 Response to Notification to Comply. I checked with the former attorney on the case, Dr. Iyer, and he said that he thought the problems were corrected after he filed the May 13, 2002 petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment and the August 23, 2002 second Response to *Notification to Comply*. Dr. Iyer based this understanding on his phone conversations with Examiners Christopher Low and Robert Sparr.

On January 20, 2004 I called the PCT help desk at the USPTO to inquire about the status of the petition and the application. I spoke to Examiner Mike Neas who stated that decisions had been issued by the USPTO.


Unfortunately, Wyeth did not timely respond to the March 18, 2004 *Notification of Defective Response*. This was despite Dr. Iyer's efforts detailed above. In conclusion, it is clear that the abandonment of this application was due to procedural and human errors and that the ensuing delay was not intentional.

Because a U.S. national phase application based on international application PCT/US99/09486 would be treated as a post-GATT and pre-AIPA application, no change in patent term would result from the late filing of this application. It is respectfully requested that this Petition to Revive be granted.

The undersigned Attorney for Applicants declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Respectfully submitted,

Feb. 13, 2004  
Date

A handwritten signature in black ink, appearing to read "J. Darrell Fontenot", written over a horizontal line.

J. Darrell Fontenot  
Registration No. 46,705  
Wyeth  
Patent Law Department  
Five Giralda Farms  
Madison, NJ 07940  
(845) 602-3144  
Attorney for Applicants